

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

SHIRLEY WILLIAMS,

Plaintiff,

vs.

CASE NO. 04-CV-72760-DT  
HON. LAWRENCE P. ZATKOFF

JO ANNE B. BARNHART,  
Commissioner of Social Security,

Defendant.

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**OPINION AND ORDER ADOPTING, IN PART,  
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

The parties filed cross-motions for summary judgment with respect to the final decision of the Commissioner of Social Security denying Plaintiff's application for Supplemental Security Income benefits and Disability Income Benefits under Titles II and XVI of the Social Security Act. This matter is currently before the Court on Magistrate Judge Pepe's Report and Recommendation of June 30, 2005, in which the Magistrate Judge recommends that Plaintiff's Motion for Summary Judgment be granted and Defendant's Motion for Summary Judgment be denied.

The Court has undertaken a thorough review of the court file, the Report and Recommendation, and the objections to the Magistrate Judge's Report and Recommendation filed by Defendant. As a result of that review, the Court adopts that portion of the Magistrate Judge's Report and Recommendation reversing the decision of the Administrative Law Judge because such decision was not supported by substantial evidence, and the Court enters that portion of the Report and Recommendation as the findings and conclusions of this Court.

In reviewing the Defendant's objections to the Report & Recommendation, the Court notes Defendant's argument that the Sixth Circuit has ruled that a judicial award of benefits may be made only where the proof of disability is overwhelming, or where the proof of disability is strong and evidence to the contrary is lacking. *Faucher v. Secretary of HHS*, 17 F.3d 171 (6<sup>th</sup> Cir. 1994). In this case, Defendant argues that the proof of disability is not overwhelming (which the Magistrate Judge

conceded), nor is the proof of disability strong or evidence to the contrary lacking. As such, Defendant argues that the correct remedy (in the absence of substantial evidence to support the Administrative Law Judge's decision) is a remand of the case for further fact-finding. The Court agrees.

As is evident in the Report and Recommendation, there are still factual issues to be resolved regarding Plaintiff's residual functional capacity, whether she can perform a significant number of jobs in the national economy, and whether she continues to smoke and what impact her smoking has on any of her claims. Therefore, it is the conclusion of this Court that the case be remanded to the Administrative Law Judge for purposes of making additional factual determinations, taking into consideration all of the evidence and setting forth the reasons and evidence which support his conclusions. Accordingly, the Court does not adopt that portion of the Magistrate Judge's Report and Recommendation finding that the proof of Plaintiff's disability is strong and evidence to the contrary is lacking and recommending that this Court remand the case solely for the purpose of awarding benefits.

For the reasons stated above, IT IS HEREBY ORDERED that Plaintiff's Motion for Summary Judgment is GRANTED IN PART AND DENIED IN PART and Defendant's Motion for Summary Judgment is DENIED. The decision of the Administrative Law Judge is REVERSED and this case is REMANDED for further factual determinations.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff  
LAWRENCE P. ZATKOFF  
UNITED STATES DISTRICT JUDGE

Dated: August 15, 2005

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on August 15, 2005.

s/Marie E. Verlinde

Case Manager  
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